

March 14, 2007

Clerk, U.S. Bankruptcy Court

Below is an Opinion of the Court.


ELIZABETH PERRIS
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
LAURA LANE) No. 06-32879-elp7
Debtor.)
MEMORANDUM OPINION RE
TRUSTEE'S OBJECTION TO
HOMESTEAD EXEMPTION

At the time Laura Lane (debtor) filed bankruptcy, she claimed a homestead exemption in the home where she resided. After filing, debtor sold her residence, with the trustee's consent.¹ The trustee filed a precautionary objection to debtor's claim of a homestead exemption. Although the trustee did not challenge debtor's right to a homestead exemption on the date of her bankruptcy filing, he claimed that any proceeds that she received from the post-petition sale would become non-exempt property of the estate if not reinvested in another homestead

¹ Debtor sold her residence pursuant to an agreement with the trustee under which the trustee agreed to abandon the property subject to the right to object to debtor's homestead exemption. The sale proceeds are being held by the trustee until resolution of the objection.

1 within one year. Debtor cannot afford another residence and will not
2 reinvest the proceeds in a new home. For the reasons explained below,
3 the court overrules the trustee's objection.

4 ISSUE

5 Whether a bankruptcy debtor who owns a homestead on the date of
6 bankruptcy and who sells the property post-petition must reinvest the
7 homestead exemption proceeds in another homestead within one year of sale
8 or lose the benefit of the exemption.²

9 DISCUSSION

10 I. Homestead Exemption in Oregon

11 There is no dispute that debtor's right to a homestead exemption is
12 governed by Oregon law, which provides, as relevant:

13 (1) A homestead shall be exempt from sale on execution, from the
14 lien of every judgment and from liability in any form for the debts
15 of the owner to the amount in value of \$30,000, except as otherwise
16 provided by law. The exemption shall be effective without the
17 necessity of a claim thereof by the judgment debtor The
homestead must be the actual abode of and occupied by the owner, or
the owner's spouse, parent or child, but the exemption shall not be
impaired by:

18 (a) Temporary removal or temporary absence with the intention to
reoccupy the same as a homestead;

19 (b) Removal or absence from the property; or

20 (c) The sale of the property.

21 (2) The exemption shall extend to the proceeds derived from such

22
23 ² Debtor also argued that the trustee's abandonment of her residence
24 cut off his interest in the proceeds. I disagree. The trustee consented
25 to the abandonment to facilitate closing a sale the debtor wanted to
26 make, with the express agreement that by so consenting, the trustee was
not waiving or impairing his claim to the proceeds if he prevailed on his
objection to the homestead exemption. This argument will not be further
discussed.

1 sale to an amount not exceeding \$30,000 . . . if the proceeds are
2 held for a period not exceeding one year and held with the intention
3 to procure another homestead therewith.

4 (3) The exemption period under subsection (1)(b) and (c) of this
5 section shall be one year from the removal, absence or sale,
6 whichever occurs first.

7 ORS 18.395 (emphasis added).

8 In Oregon, "[i]t is the value which is exempt, not the property in
9 and of itself." Boyd v. Oregon, 249 Or. 513, 517 (1968), overruled on
10 separate grounds by Mendenhall v. Northwest Credit Adjusters, Inc., 263
11 Or. 104, 110-11 (1972). If the exemption applies and the homestead is
12 sold pursuant to a court order, ORS 18.395(8) provides that the sheriff
13 shall pay the homestead owner the amount of the exemption out of the sale
14 proceeds.

15 The homestead exemption right is broader than a mere right to
16 proceeds at the time of sale. An execution sale of homestead property
17 can be accomplished only if the judgment lien exceeds \$3,000 and the bid
18 for the homestead exceeds the sum of the costs of the sale and the amount
19 of the exemption. ORS 18.395(5), (8). Oregon law gives a debtor the
20 ability to discharge judgment liens on homestead property if the property
21 is being sold for an amount less than the total of encumbrances senior to
22 the judgment lien and the homestead. ORS 18.412(1)(c).

23 II. Post-Petition Changes in the Character of Exempt Property Are
24 Irrelevant to the Exemption Analysis

25 A. Section 522(c) and Post-Petition Homestead Sale Case Law

26 Exemptions in bankruptcy are determined as of the date the petition
is filed, unless a case is converted from one chapter of the Bankruptcy
Code to another. 11 U.S.C. § 522(b)(3)(A); In re Chiu, 266 B.R. 743, 751

1 (9th Cir. BAP 2001). See also White v. Stump, 266 U.S. 310, 313-14
2 (1924) (references to exempt property and rights to exemptions relate to
3 some point of time; that point is the petition date). Generally, only
4 facts existing on the filing date are relevant to determining whether a
5 debtor qualifies for her homestead exemption. In re Herman, 120 B.R.
6 127, 130 (9th Cir. BAP 1990).

7 Fixing exemption rights as of the filing date is supported by the
8 language of section 522(c), which states that, "[u]nless the case is
9 dismissed, property exempted under this section is not liable during or
10 after the case for any debt of the debtor that arose . . . before the
11 commencement of the case" It is also supported by the statement
12 in Owen v. Owen, 500 U.S. 305, 308 (1991), that section 522(c) immunizes
13 property that is properly exempted against liability for pre-bankruptcy
14 debts. Thus, the critical factor in determining whether the reinvestment
15 requirement applies is the timing of the sale of the homestead, *i.e.*
16 whether the homestead was sold pre- or post-petition. In re Parks, 96.2
17 I.B.C.R. 64, 65-66 (Bankr. D. Idaho 1996) (evaluating Idaho reinvestment
18 requirement and holding that "[i]n a Chapter 7 case, property deemed
19 exempt is no longer property of the bankruptcy estate, and its subsequent
20 transformation into proceeds which would be non-exempt under state law
21 does not bring those proceeds back into the bankruptcy estate.").

22 There is a limited exception to the general rule that only facts
23 existing on the date of filing are relevant to determining the exemption.
24 Where the debtor holds homestead proceeds on the date of bankruptcy and
25 the pertinent exemption statute contains a "sunset provision" that
26 conditions validity of an exemption on the satisfaction of a condition

1 subsequent, such as reinvesting sale proceeds within a specified time
2 period, the sunset provision can apply in the bankruptcy context. In re
3 Combs, 166 B.R. 417, 420 (Bankr. N.D. Cal. 1994) (relying on In re
4 Golden, 789 F.2d 698, 700 (9th Cir. 1986)). This limited exception does
5 not apply to a debtor who claims a homestead exemption in real property
6 rather than proceeds if the state law provides, as does Oregon, that upon
7 sale the sheriff turns over to the debtor the amount of the homestead
8 exemption. The right to a homestead exemption in real property is not
9 conditional.

10 This approach is consistent with the structure of ORS 18.395. The
11 statute has two subparts: The first provides an exemption for the equity
12 in the homestead up to a certain maximum, and the second provides an
13 exemption for proceeds derived from the sale of the homestead. The
14 subpart pertinent to this debtor on the date of bankruptcy was the first,
15 not the second, because on the date of bankruptcy debtor had a residence,
16 not proceeds.

17 This approach is also consistent with the Ninth Circuit Bankruptcy
18 Appellate Panel (BAP) decision in Herman, which involved a claim under
19 California's automatic homestead exemption statute. 120 B.R. at 129.
20 See also CCP 704.720. The California statute provided that a homestead
21 is exempt from sale to enforce a money judgment unless the proceeds of
22 such an execution sale are sufficient to pay all prior liens and the
23 amount of the exemption. Herman, 120 B.R. at 129. The proceeds of a
24 sale are also exempt from execution, but the exemption does not apply to
25 voluntary sales. Id. at 129-30.

26 The issue was whether a debtor could avoid a judgment lien under

1 section 522(f) as a lien that impaired an otherwise available exemption.
2 Id. at 129. The lien holder contended that the automatic homestead
3 exemption did not apply because the residence was voluntarily sold. Id.
4 at 130.

5 In refusing to decide whether the sale was voluntary or an execution
6 sale, the BAP concluded that the post-petition sale was irrelevant in
7 determining the exemption:

8 The petition date is appropriate because the existence of exemptions
9 presupposes a hypothetical attempt by the trustee to levy upon and
10 sell all of the debtor's property upon the filing of the petition.
11 Thus, any post-petition disposition of the property or post-petition
change in the identity of the property into proceeds has no impact
upon the exemption analysis.

12 Id. The panel then evaluated whether the debtor would have been entitled
13 to the exemption on the date of the petition and held that the exemption
14 was valid on that date. Id. The panel distinguished the Ninth Circuit
15 decision in Golden on the basis that "the debtor in that case held
16 proceeds on the date of filing rather than an interest in the residence."
17 Id. at 130 n.5.

18 Similarly here, debtor owned a residence on the date of filing; she
19 did not hold sale proceeds as in Golden. Although the California statute
20 at issue in Herman does not have a reinvestment requirement, the court's
21 reasoning is equally valid here where there is a post-petition change in
22 the character of otherwise exempt property. I will follow the Ninth
23 Circuit BAP precedent of Herman.

24 Courts from other jurisdictions agree with the conclusion reached in
25 Herman that post-petition changes in the character of exempt property
26 have no effect on the validity of the exemption. See, e.g., In re

1 Peterson, 897 F.2d 935, 937 (8th Cir. 1990) (post-petition death of
2 debtor, leaving no surviving spouse or dependent child, under North
3 Dakota statute providing a homestead exemption to the head of household
4 only if there is a surviving spouse or dependent child at the time of
5 death); In re Cunningham, 2006 WL 3438560, at *7-9 (D. Mass. Nov. 28,
6 2006) (post-petition, voluntary sale of residence under Massachusetts
7 homestead exemption statute that did not exempt proceeds); In re Reed,
8 184 B.R. 733, 738 (Bankr. W.D. Tex. 1995) (post-petition sale of
9 residence under Texas statute requiring reinvestment of proceeds within
10 six months). See also Parks, 96.2 I.B.C.R. at 65 n.2 (listing cases from
11 various jurisdictions that hold that post-petition changes in the
12 character of exempt property have no effect on the exemption). For
13 example, the court in Reed stated:

14 If the debtor decides, as part of his fresh start, to sell the
15 house, buy a Winnebago, and travel around the country from
16 campground to campground with his wife and his dog, [section 522(c)]
17 appears to place no impediment in his path. True enough, the
18 Winnebago may not be exempt from obligations he incurs after his
19 discharge (depending on state law), but it should not be vulnerable
20 to the satisfaction of any of the debtor's prepetition obligations.
21 Were the rule otherwise, then estates could be reopened to
22 administer such proceeds at virtually any time, robbing bankruptcy
23 administration of any sort of meaningful finality, and robbing the
24 bankruptcy discharge of its efficacy.

25 Reed, 184 B.R. at 738.

26 B. Practical and Policy Considerations

As the court in Reed recognized, there are at least two problems
with the trustee's approach in this case--it undermines finality and
fosters inefficiency. Applying the reinvestment requirement to proceeds
from homesteads sold after the petition date places a debtor's rights in
limbo until the exempt property is no longer property of the estate,

1 potentially a long period of time.³

2 If a trustee can claim the right to proceeds generated by the post-
3 petition sale of a debtor's homestead, trustees may be motivated to claim
4 an interest in the homestead and postpone closing a case so long as there
5 is any possibility the debtor's circumstances might change. The
6 concurrence in In re Konnoff, 2006 WL 3445575, at *7 (9th Cir. BAP Nov.
7 14, 2006) (Pappas, J. concurring), poses a thoughtful question that
8 points out the uncertainty that will be created if the court adopts the
9 interpretation urged by the trustee. Judge Pappas, using the example of
10 a tools of the trade exemption, asked, "If six, 12 or 24 months after
11 filing for bankruptcy, a debtor changes occupations, can the trustee then
12 seize the formerly exempt tools for liquidation?" Id.

13 Allowing post-petition changes to determine exemption rights
14 "cloud[s] all exemptions, leaving them subject to divestment upon the
15 debtor's later use of the exempt property in a manner not contemplated
16 under the exemption statutes[,] and destroys the finality provided by
17 the bankruptcy process. In re Seyfert, 97 B.R. 590, 592 (Bankr. S.D.
18 Cal. 1989).

19 /////

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22 ³ The Code potentially provides a means to avoid this practical
23 problem. Early in the case the debtor can request, and the court can
24 order, abandonment under section 554(b) of any property that has no or
25 inconsequential equity that can benefit the estate. To adopt an
26 interpretation that forces this extra step effectively rewards trustees
who are dilatory and forces the debtor to incur the extra expense of
prosecuting a motion to abandon to be assured that he or she gets the
exemption claimed.

1 C. Fixing Exemption Rights as of the Petition Date Does Not Create
2 a New Exemption or Modify State Law

3 The trustee argues that, by not requiring reinvestment of sale
4 proceeds, the court is reading into ORS 18.395 a new unrestricted
5 exemption for proceeds that is not contemplated by the legislature and is
6 modifying state law by granting to debtor a benefit she would not have
7 received if she had not filed bankruptcy.

8 In support of his position, the trustee relies on In re Earnest, 42
9 B.R. 395 (Bankr. D. Or. 1984):

10 The Oregon exemption law for homestead proceeds contains two
11 conditions. The language of these conditions was as much a part of
12 the applicable law on the date both [debtors] filed their bankruptcy
13 petitions as is the language actually granting the exemption. These
14 conditions can be labeled either conditions precedent or conditions
15 subsequent. Under either approach, the court cannot avoid, after a
16 year's passage, a judicial inquiry to determine if the debtor either
17 receives or keeps, as the case may be, the exemption. [The debtors]
18 would like the court to treat the conditions as subsequent, to grant
19 them the exemption, and then to deny itself, because of the
20 bankruptcy filing, the power to later inquire if the conditions were
21 met. This court finds nothing in the Bankruptcy Code that requires
22 or allows it to fragment the state law in this manner to grant a
23 benefit to the debtors they would not have received if they had not
24 filed bankruptcy.

25 42 B.R. at 398-99 (emphasis added). In Earnest, the debtors had sold
26 their homesteads pre-petition, and received promissory notes with due
dates beyond one year after the sales. The debtors did not reinvest the
proceeds in another homestead within a year of the sales. Accordingly,
the language relied on by the trustee addresses a factual scenario
considerably different from the situation of debtor here, who owned real
estate rather than proceeds on the petition date.

Additionally, the cases cited in Earnest and relied on by the
trustee, In re Monks, Case No. 382-01595 (Bankr. D. Or. December 13,

1 1982), and In re Winchester, 46 B.R. 492 (9th Cir. BAP 1984), involve a
2 pre-petition and pre-conversion sale respectively. The debtors in
3 Winchester sold their homestead prior to conversion from chapter 13 to
4 chapter 7 and were holding proceeds at the time of conversion that they
5 failed to reinvest within one year. Winchester, 46 B.R. at 493. The
6 court held that the conversion date was the relevant date for determining
7 the homestead exemption, and denied the exemption in the proceeds. Id.
8 at 495.

9 The trustee also relies on In re Golden, 789 F.2d 698 (9th Cir.
10 1986), a case interpreting the California homestead statute with a
11 similar 6-month reinvestment requirement. See also In re White, 727 F.2d
12 884, 888 (9th Cir. 1984) (noting that the Oregon statute is similar to
13 the California statute). Golden also involved the pre-petition sale of a
14 homestead and a claim of exemption in the proceeds. Golden, 789 F.2d at
15 699. Although Golden discusses the Oregon exemption statute and cites to
16 Winchester to support its conclusion that the reinvestment requirement
17 applies, Winchester involved a pre-conversion homestead sale and so is
18 not helpful here.

19 The cases on which the trustee relies are inapplicable because they
20 deal with debtors who held proceeds on the date of filing or date of
21 conversion from one chapter to another. See also In re Konnoff, 2006 WL
22 3445575, at *3 (9th Cir. BAP Nov. 14, 2006) (pre-petition homestead sale
23 under Arizona statute requiring reinvestment of proceeds within 18
24 months); In re Smith, 342 B.R. 801, 803 (9th Cir. BAP 2006) (same); In re
25 Foreacre, 2006 WL 3833927, at *2 (Bankr. D. Ariz. December 29, 2006)
26 (same); In re Vansickle, 350 B.R. 897, 898 (Bankr. D. Idaho 2006) (pre-

petition sale under Oregon homestead statute); In re Dezonias, 347 B.R. 920, 922, 924 (Bankr. M.D. Fla. 2006) (pre-petition foreclosure sale under Florida statute requiring reinvestment of homestead sale proceeds within a reasonable time). Cf. In re Knudsen, 80 B.R. 193, 194-95 (Bankr. C.D. Cal. 1987) (post-petition sale under California law), criticized by Herman, 120 B.R. at 131 ("[W]e find Knudsen internally inconsistent in the sense that it recognizes that exemptions are determined as of the date of the petition and that post-petition changes are not relevant, yet it goes on to deny the debtor's claim of exemption on the basis of the post-petition sale of the homestead."). The trustee's arguments that fixing exemption rights as of the petition date and limiting the reinvestment requirement to homestead proceeds held on the date of filing creates an unintended exemption in homestead sale proceeds and impermissibly modifies state law are not well taken.

To the contrary, it is the position asserted by the trustee that would be a change in Oregon law. As discussed earlier, under Oregon law there could not have been a forced sale of the debtor's property if it could not be sold for enough to pay the sum of the costs of the sale plus the full amount of the exemption. If the trustee had sold the property, consistent with ORS 18.395(8), he would have had a duty to turn over to debtor the amount of the homestead exemption.⁴ Oregon law does not allow

⁴ Debtor voluntarily sold her homestead after abandonment by the trustee. I find this procedural distinction irrelevant to the outcome of this case for two reasons. First, it appears the trustee's position regarding reinvestment would apply regardless of whether the residence was sold involuntarily by the trustee or voluntarily by the debtor. Trustee's Reply at 4. Second, assuming the trustee's position is limited (continued...)

1 the sheriff to hold proceeds of a homestead sale for one year, subject to
2 the debtor's right to reinvest in a new homestead, or to turn the
3 homestead proceeds over to the executing creditor if, at the end of the
4 year, the debtor has not so reinvested. That is exactly what the trustee
5 is attempting to do in this case.⁵

6 CONCLUSION

7 Debtor held a valid homestead exemption at the time she filed her
8 bankruptcy petition. The debtor had the right to the amount of her
9 homestead exemption superior to the right of the bankruptcy trustee upon
10 sale of the property. The post-petition conversion of her homestead into
11 proceeds has no effect on the exemption. Therefore, the trustee's
12 objection will be overruled.

13 ###

14 cc: Laura Lane
15 Ann Chapman
16 Linda Johannsen
17 United States Trustee
18
19

20 ⁴(...continued)

21 to voluntary debtor sales, there is no statutory basis for applying the
22 reinvestment requirement to debtors who sold their residences after
abandonment by the trustee and not to debtors whose residences were sold
involuntarily.

23 ⁵ When the sheriff, or the bankruptcy trustee, turns over homestead
24 proceeds to the debtor, the proceeds are subject to the claims of
creditors, the collection of whose debts have not been stayed by a
25 bankruptcy. In the post-bankruptcy context, if a creditor with a post-
petition debt or a nondischargeable debt executes on the homestead
26 proceeds received by a debtor from a post-bankruptcy sale, any exemption
in the proceeds will subject to the provisions of ORS 18.395(2).